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**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing	)	
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Filing Date: March 28, 2022	)	Case No.: PSH-22-0069
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Issued: July 21, 2022

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**Administrative Judge Decision**

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James P. Thomas, III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."<sup>1</sup> As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should be restored.

**I. Background**

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. As part of the clearance process in 2015, the Individual was directed to complete a Questionnaire for National Security Positions (QNSP). Exhibit (Ex.) 13. In his QNSP, he disclosed that he had been arrested and charged with Aggravated Driving While Intoxicated in August 2014; that he was "ticketed for illegal alcohol possession by a minor[,] and [l]ater charged with [Driving Under the Influence]" in June 1997; and that he was charged with Driving Under the Influence (DUI) in May 1998. *Id.* at 35-39. He further disclosed that he was charged with "unlawful consumption of alcohol[]" in January 1999, "[a]rrested for improper lane travel and DUI" in November 2000, and charged with a DUI after being involved in an accident in April 2001. *Id.* at 39-42. The Individual disclosed these matters in a subsequent April 2021 QNSP. Ex. 15 at 70-72; Ex. 12. There are no pending or otherwise outstanding criminal charges identified in the record.

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<sup>1</sup> The regulations define access authorization as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

More recently, on June 21, 2021, the Individual reported that he had been admitted into a hospital “for alcohol intoxication” earlier that month. Ex. 7 at 2. He disclosed that, while on vacation, he had consumed approximately “one fifth of vodka over the course of a day[,]” and he admitted that he became intoxicated when he returned home. Ex. 9 at 1. The Individual was then transported to the hospital where he detoxed from alcohol. Ex. 7; Ex. 9 at 1-2. The record indicates that the Individual experienced acute alcohol withdrawal symptoms, and he was discharged from the hospital after approximately one week. Ex. 7 at 3; Ex. 9 at 2. Upon his discharge, medical personnel “advised [the Individual] to enter into an inpatient [rehabilitation] unit.” Ex. 7 at 3. Medical personnel also recommended that the Individual discontinue alcohol consumption and discharged him with appropriate medication. Ex. 9 at 2.

As a result of the incident, the Individual’s workplace access was restricted, and he was placed in his employer’s Fitness for Duty (FFD) program whereby his employer evaluated his fitness to work in a secured setting. Ex. 9 at 2; Ex. 8 at 5; Tr. at 29. The Individual reported in his subsequent August 2021 Letter of Interrogatory (LOI) that he was seeing a therapist and attending Alcoholics Anonymous (AA) meetings. Ex. 9 at 2-3. The Individual also reported, that since June 2021, he had been attending two to three AA meetings every week and attending his therapy sessions once a week. *Id.* at 3. He stated that, while he had not consumed alcohol “for more than two months” prior to the LOI, he had previously been consuming four to six drinks approximately four to five days per week. *Id.* at 5.

As a result of the responses provided in the LOI, the LSO instructed the Individual to undergo a psychological evaluation conducted by a DOE-consultant psychiatrist (“DOE Psychiatrist”). Ex. 10. The DOE Psychiatrist produced a report of his findings in October 2021. *Id.* at 2. In forming his opinion, the DOE Psychiatrist relied on the information he obtained in his clinical interview with the Individual, as well as his review of the Individual’s Personnel Security File and the Diagnostic Statistical Manual of Mental Disorders, 5th Edition. *Id.* The DOE Psychiatrist also contacted the Individual’s treating clinicians. *Id.* at 8. The Individual informed the DOE Psychiatrist that he became intoxicated after consuming alcohol over the span of two or three days in June 2021, and, as a result, he was admitted to the hospital for treatment. *Id.* at 5. The Individual consumed “a half of a fifth of vodka each day[,]” and “in the 24 hours prior to [his] admission [into the hospital], he consumed a fifth of vodka.” *Id.* The Individual again indicated that he last consumed alcohol on June 20, 2021. *Id.* at 6. A Phosphatidylethanol (PEth) blood test and an Ethyl Glucuronide (EtG) urine test were administered in conjunction with the psychological evaluation. *Id.* at 8. Both tests are designed to detect alcohol consumption, and the results of both tests were negative. *Id.* at 9. The DOE Psychiatrist diagnosed the Individual with Alcohol Use Disorder (AUD), Severe, in Early Remission, without adequate evidence of rehabilitation or reformation. *Id.* at 10. The DOE Psychiatrist recommended that the Individual continue receiving outpatient therapy with his therapist for one year from the date he first began receiving therapy. *Id.* He also recommended that the Individual remain on FFD for one year from his sobriety date and participate in random alcohol use testing, attend weekly AA meetings for a year from his sobriety date, abstain from alcohol for one year, and take PEth tests on a monthly basis. *Id.*

As a result of the above information, the LSO began the present administrative review proceeding by issuing a letter (“Notification Letter”) to the Individual in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance and that his clearance had been suspended. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25, the Individual testified on his own behalf and presented the testimony of a work colleague, an FFD psychologist (“FFD Psychologist”), a friend who works in the Individual’s workplace (“Workplace Friend”), and his wife. He also submitted five exhibits, marked as Exhibits A through E. The DOE Counsel presented the testimony the DOE Psychiatrist and submitted fifteen exhibits marked as Exhibits 1 through 15.

## **II. Notification Letter and Associated Concerns**

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline G of the Adjudicative Guidelines. Ex. 1. Under Guideline G (Alcohol Consumption), “[e]xcessive alcohol consumption often leads to the exercise of questionable judgement or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” Adjudicative Guidelines at ¶ 21. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are “[a]lcohol-related incidents away from work, such as driving while under the influence . . . regardless of the frequency of the individual’s alcohol use[.]” and “[d]iagnosis by a duly qualified medical or mental health professional . . . of alcohol use disorder[.]” Adjudicative Guidelines at ¶ 22(a) and (d).

The LSO alleged in the SSC that the following: (1) the DOE Psychiatrist diagnosed the Individual with AUD, Severe, in early remission, and without adequate evidence of rehabilitation or reformation; (2) as a result of consuming alcohol and exhibiting intoxication and combative behavior, the Individual was taken to the hospital by law enforcement personnel in June 2021; (3) after consuming four to five 22-ounce beers, the Individual was arrested and charged with Aggravated DUI and Reckless/Careless driving in August 2014; (4) after consuming approximately three or four alcohol beverages, the Individual was arrested and charged with DUI with Accident and Hit and Run in April 2001; (5) after consuming six alcoholic beverages, the Individual was arrested and charged with DUI, Improper Lane Change, and Littering in November 2000; (6) after consuming four shots of liquor, the Individual was arrested and charged with Unlawful Purchase/Possession/Consumption of alcohol by a minor in January 1999; (7) after consuming approximately five or six beers, the Individual was arrested and charged with DUI and Failure to Yield in May 1998; (8) and after consuming approximately two or three beers, the

Individual was arrested and charged with DUI and Reckless Driving in June 1997. Ex. 1 at 1-2. This information justifies the LSO's invocation of Guideline G.

### **III. Regulatory Standards**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### **IV. Findings of Fact and Hearing Testimony**

The Individual began his testimony by declaring that he is an alcoholic and that he understands that he cannot consume alcohol. Tr. at 64. He came to this conclusion in June or July 2021, and testified that he has been sober since June 20, 2021, days after his release from the hospital. *Id.* at 65. He stated that his desire to consume alcohol was caused by his need for "control," which results in "stress and anxiety[.]" *Id.* at 66, 69, 82-83. He testified that he first began attending AA meetings after he was released from the hospital because he understood the serious nature of his situation. *Id.* at 67-68. He testified that he had been attending AA meetings at least once a week, and he had previously attended as many as three meetings a week in the summer of 2021. *Id.* at 72. The Individual found the group welcoming and felt that "the support network of people [is] critical to [him] in staying sober." *Id.* at 68, 75-76. He testified that he had not engaged a sponsor because he felt more comfortable relying on his therapist for the sort of assistance an AA sponsor would offer. *Id.* at 69-70. He had, however, worked on the AA Twelve Steps by himself "with very rigorous honesty[.]" *Id.* at 70. He also enjoyed the support of his wife and family, which he relied upon in June 2021 when he reached out for support to combat his desire for alcohol. *Id.* at 70-71. He testified that he remains motivated to remain abstinent by considering his wife, child, and career. *Id.* at 71. Accordingly, he testified that he intends to indefinitely attend AA meetings at least once a week. *Id.* The Individual also testified that he does not intend to drink alcohol in the future, and he enjoys his sobriety. *Id.* at 78-79.

The Individual confirmed that he began seeing his therapist and attending AA in June 2021. *Id.* at 66-67, 73. He testified that, since beginning therapy, he has learned about the “thought processes” that resulted in his alcohol consumption, and he has learned how to cope with and avoid triggers, which include certain social situations. *Id.* at 73-74, 81-82. The Individual testified that refusing an alcoholic beverage feels like a “little victory” to him. *Id.* at 74. He acknowledged the alcohol-related criminal charges cited in the SSC, and he testified he has a relapse prevention plan, which includes attending therapy sessions and AA meetings, avoiding triggers, and preparing for situations where alcohol will be present. *Id.* at 85-86; Ex. E.

The FFD Psychologist testified that the Individual was required to participate in his employer’s FFD program. *Id.* at 21-22. As part of that program, the Individual was required to see the FFD Psychologist. *Id.* The FFD Psychologist assessed the Individual at their first meeting, and she recommended that he remain sober and receive therapy. *Id.* at 24. She discussed “regular outpatient therapy” with the Individual and suggested an intensive outpatient program (IOP)<sup>2</sup> and AA participation. *Id.* She testified that the Individual had complied with her recommendations and that he was “doing well with . . . with his current provider[.]” *Id.* at 24-25, 29. The FFD Psychologist noted that she had independently observed “a significant change in his attitude toward treatment[.]” stating that he demonstrated insight regarding his triggers and a change in his thought processes. *Id.* at 25. She testified that she had recently contacted the Individual’s therapist, and the therapist reported that the Individual had been appropriately participating in therapy and that he was “making some good progress.” *Id.* at 25-26. The FFD Psychologist also confirmed that the Individual had been subject to random and unannounced EtG testing, initially at a rate of twice per week. *Id.* at 28, 34. After a series of negative results, the frequency of testing was reduced to one per week, which was the most recent rate of testing. *Id.* at 28. The FFD Psychologist testified that all of the test results were negative.<sup>3</sup> *Id.* at 29. The FFD Psychologist closed the Individual’s file after one year in the program and determined that the Individual “has no safety or security concerns[.]” *Id.* at 28, 29-30.

The record includes a letter submitted by the Individual’s therapist referenced above in the FFD Psychologist’s testimony. Ex. D at 2. According to that letter, the therapist’s treatment primarily focused on the Individual’s sobriety, and the therapist observed the Individual’s “strong willingness to examine past patterns of behavior and maladaptive coping skills[.]” *Id.* The therapist also reported that the Individual has focused on relapse prevention, developed strategies to avoid relapse, and recognized the importance of accepting help. *Id.*

The Individual’s wife testified that the Individual “has absolutely no desire to drink[.]” again. Tr. at 51. She confirmed that he last consumed alcohol a year prior to the hearing date and that they decided together that they would no longer keep alcohol in the home. *Id.* at 53, 58. She also testified that the Individual frequently talks to her about his positive experiences in therapy and AA. *Id.* at 54-55, 57-58. She testified that the Individual finally realized “how bad alcohol does affect one’s

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<sup>2</sup> The FFD Psychologist recommended that the Individual attend a local IOP in person. Tr. at 24. That IOP closed weeks after that recommendation was made. *Id.* Because the Individual was doing well with his own therapist, she agreed that the Individual should continue seeing his therapist rather than engage a virtual IOP. *Id.*

<sup>3</sup> The Individual voluntarily submitted to seven PEth tests from October 2021 to May 2022. Ex. C. All test results were negative. *Id.*; Ex. 10 at 8.

life professionally and personally[.]” *Id.* at 55. Further, the Individual’s wife testified that they have changed their hobbies as a couple since the Individual began abstaining, and they do physical activities like hiking. *Id.* at 56, 75. She also testified that she had observed the Individual decline alcoholic drinks, and she is confident that the Individual will never consume alcohol again. *Id.* at 59-60.

The Individual’s colleague, who has known the Individual for approximately ten years, testified that he knew the Individual had been regularly receiving counseling and undergoing alcohol testing for approximately one year. *Id.* at 14, 18. The Workplace Friend testified that the Individual began attending the same AA meetings that he attends, and, as a result, he typically sees the Individual twice a week. *Id.* at 39. He indicated that the Individual is an active and meaningful AA participant who shares his struggles with the group. *Id.* at 41, 46.

The DOE Psychiatrist testified that, based on the information before him, the Individual had demonstrated reformation and rehabilitation of the AUD even though the Individual was five days short of the recommended one year of sobriety. *Id.* at 91. The DOE Psychiatrist noted that, at the time of the evaluation in 2021, the Individual had already begun attending therapy and AA meetings, which he recommended that the Individual continue in the report. *Id.* He testified that the Individual would be in sustained remission once he completed a year of abstinence, which he considered “a technical point[.]” *Id.* Finally, the DOE Psychiatrist testified that the Individual’s risk of relapse was low, and he gave the Individual a good prognosis. *Id.* at 92-95.

## V. Analysis

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline G include:

- (a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or judgment;
- (b) The individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) The individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and
- (d) The individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23.

The Individual brought forth sufficient evidence to apply ¶ 23(b) to resolve the Guideline G security concerns. The Individual unequivocally acknowledged his past maladaptive alcohol use during the hearing, and he stated that he came to this conclusion soon after his June 2021 hospitalization. He also set forth evidence of the actions he had taken to overcome his problem. The evidence demonstrates that he has been abstaining from alcohol since June 2021. His testimony and the testimony of his witnesses on this point is corroborated by the record of clinical testing he has undergone throughout the process. Furthermore, the Individual began regularly seeing a therapist and attending AA meetings after following the recommendations of the FFD Psychologist. The evidence demonstrates that the Individual is continuing to make progress in therapy, and he is continuing to attend AA because he recognizes the strong impact it has had on his ability to successfully remain sober. The record also establishes that he has the understanding and support of his wife and family, and he has taken up healthier activities as part of a positive lifestyle change. Further still, the Individual expressed a strong commitment to sobriety and established that he has worked to recognize and deal with his triggers, which includes his creation of a relapse prevention plan. Finally, the DOE Psychiatrist opined that the Individual had rehabilitated and reformed his AUD. The DOE Psychiatrist's testimony described how the Individual followed the treatment recommendations provided in the report, and the DOE Psychiatrist gave the Individual a good prognosis with a low chance of relapse. Accordingly, the Individual has demonstrated a clear pattern of abstinence in accordance with treatment recommendations. I further find that the alcohol-related charges and arrests outlined in the SSC are linked to the Individual's alcohol consumption.<sup>4</sup> Therefore, I conclude based on my above findings that the conduct is unlikely to recur. Accordingly, I find that the Individual has resolved the Guideline G security concerns pursuant to ¶ 23(b).

## **VI. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the SSC. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

James P. Thompson III  
Administrative Judge  
Office of Hearings and Appeals

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<sup>4</sup> I also note that, prior to the 2021 incident, over seven years has elapsed since the Individual's last alcohol-related incident. Therefore, my reasoning under ¶ 23(b) and the passage of time are sufficient to resolve the related security concerns under ¶ 23(a).